Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 87-142)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
October 1, 1987	$0.007080
October 2, 1987	.007100
South Korea won:	
October 1, 1987	.001235
October 2, 1987	.001235
Taiwan N.T. dollar:	
October 1, 1987	.033190
October 2, 1987	.033256

(LIQ-03-01 S:COM CIE)

Dated: November 2, 1987.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87-143)

FOREIGN CURRENCIES

Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
October 5, 1987	$0.007090
October 6, 1987	.007112
October 7, 1987	.007140
October 8, 1987	.007151
October 9, 1987	.007171
South Korea won:	
October 5–9, 1987	.001235
Taiwan N.T. dollar:	
October 5, 1987	.033311
October 6–9, 1987	.033300

(LIQ-03-01 S:COM CIE)

Dated: November 2, 1987.

Angela DeGaetano,
Chief,
Customs Information Exchange.

(T.D. 87-144)

FOREIGN CURRENCIES

Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

October 12, 1987: Holiday.

Greece drachma:	
October 13, 1987	$0.007156
October 14, 1987	.007189
October 15, 1987	.007220
October 16, 1987	.007210
South Korea won:	
October 13–15, 1987	.001236
October 16, 1987	.001237
Taiwan N.T. dollar:	
October 13–16, 1987	.033300

(LIQ–03–01 S:COM CIE)

Dated: November 2, 1987

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87–145)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
October 19, 1987	$0.007289
October 20, 1987	.007194
October 21, 1987	.007184
October 22, 1987	.007168
October 23, 1987	.007239
South Korea won:	
October 19, 1987	.001237
October 20, 1987	.001238
October 21–23, 1987	.001237
Taiwan N.T. dollar:	
October 19–23, 1987	.033300

(LIQ-03-01 S:COM CIE)

Dated: November 2, 1987.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87-146)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
October 26, 1987	$0.007310
October 27, 1987	.007307
October 28, 1987	.007386
October 29, 1987	.007435
October 30, 1987	.007405
South Korea won:	
October 26-27, 1987	.001238
October 28, 1987	.001240
October 29, 1987	.001241
October 30, 1987	.001242
Taiwan N.T. dollar:	
October 26-29, 1987	.033300
October 30, 1987	.033322

(LIQ-03-01 S:COM CIE)

Dated: November 2, 1987.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87–147)

FOREIGN CURRENCIES

Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 87–141 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Spain peseta:	
October 23, 1987	$0.008628

(LIQ–03–01 S:COM CIE)
Dated: November 2, 1987

Angela DeGaetano,
Chief,
Customs Information Exchange.

(T.D. 87–148)

FOREIGN CURRENCIES

Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 87–141 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:	
October 29, 1987	$0.669500
October 30, 1987	.670000
Austria schilling:	
October 28, 1987	.081004
October 29, 1987	.082220
October 30, 1987	.082152

Belgium franc:	
October 29, 1987	.027586
October 30, 1987	.027624
Denmark krone:	
October 28, 1987	.148258
October 29, 1987	.149813
October 30, 1987	.149656
France franc:	
October 29, 1987	.171468
Germany deutsche mark:	
October 28, 1987	.570418
October 29, 1987	.578536
October 30, 1987	.578603
Ireland pound:	
October 29, 1987	1.536000
October 30, 1987	1.534500
Japan yen:	
October 28, 1987	.007185
October 29, 1987	.007233
October 30, 1987	.007225
Netherlands guilder:	
October 28, 1987	.506688
October 29, 1987	.513822
October 30, 1987	.514139
New Zealand dollar:	
October 28, 1987	.590000
October 29, 1987	.588000
October 30, 1987	.593000
Spain peseta:	
October 26, 1987	.008673
October 27, 1987	.008688
October 28, 1987	.008741
October 29, 1987	.008617
October 30, 1987	.008673
Switzerland franc:	
October 27, 1987	.687994
October 28, 1987	.692521
October 29, 1987	.696864
October 30, 1987	.699790
United Kingdom pound:	
October 28, 1987	1.71000
October 29, 1987	1.71900
October 30, 1987	1.72150

(LIQ-03-01 S:COM CIE)
Dated: November 2, 1987.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 87-149)

REIMBURSABLE SERVICE

EXCESS COST OF PRECLEARANCE OPERATION

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., November 4, 1987.

Notice is hereby given that pursuant to Section 24.18(d), Customs Regulations (19 CFR 24.19(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning November 23, 1987.

Installation	Biweekly excess cost
Montreal, Canada	$17,790
Toronto, Canada	33,722
Kindley Field, Bermuda	12,593
Nassau, Bahama Islands	22,992
Vancouver, Canada	13,284
Winnipeg, Canada	2,928
Freeport, Bahama Islands	14,791
Calgary, Canada	8,293
Edmonton, Canada	4,587

WILLIAM F. RILEY,
Comptroller.

[Published in the Federal Register, December 4, 1987 (52 FR 46146)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
James L. Watson
Gregory W. Carman
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Bernard Newman

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Decisions of the United States Court of International Trade

(Slip Op. 87–120)

ANDREW R. MCCARTHY D/B/A LONG BEACH CLASSIC IMPORTS, PLAINTIFF *v.* JOHN H. HEINRICH, DISTRICT DIRECTOR OF CUSTOMS, LOS ANGELES, AND THE UNITED STATES OF AMERICA, DEFENDANTS

Court No. 87–03–00553

Before DICARLO, *Judge.*

[Action dismissed for lack of jurisdiction.]

(Decided November 2, 1987)

Stein Shostak Shostak & O'Hara (*Joseph P. Cox*) for plaintiff.

Richard K. Willard, Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, Department of Justice (*Platte B. Moring, III*) for defendants.

DICARLO, *Judge:* Plaintiff challenges the seizure and summary forfeiture of certain motor vehicles by the United States Customs Service (Customs). Defendants move pursuant to Rule 56 of the rules of this Court for summary judgment and ask the Court to dismiss plaintiff's action for lack of jurisdiction. The Court finds that it does not have jurisdiction and dismisses the action.

Customs seized 10 of the 24 motor vehicles at issue in November, 1984 pursuant to 19 U.S.C. § 1592 (1982) and 18 U.S.C. § 545 (1982). Customs then seized the remaining 14 motor vehicles in September, 1985 under the same statutory sections. All 24 motor vehicles were summarily forfeited to the United States between June and December 1986.

While plaintiff is not the importer of record, he asserts that he is a party-in-interest to all the vehicles within the meaning of 19 U.S.C. §§ 1607 and 1618 (Supp. III 1985). He claims that Customs denied him his right to notice of seizure and disposition provided by section 1607 and his right to mitigation consideration provided by section 1618 because Customs did not give him proper notice of the 10 seizures of 1984, any notice of the 14 seizures in 1985, or any notice of the 24 summary forfeitures which he says were made pursu-

ant to 19 U.S.C. § 1592 rather than 18 U.S.C. § 545 as claimed by defendant.

Plaintiff argues this Court has jurisdiction under 19 U.S.C. § 1592(e) (1982) and 28 U.S.C. § 1581(i) (1982) to hear his challenge to the propriety of Custom's seizure and summary forfeiture of the 24 motor vehicles.

Subsection (e) of 19 U.S.C. § 1592, however, is not a jurisdictional provision. That subsection sets out the applicable procedure to be followed in an action the United States commences in this Court pursuant to 28 U.S.C. § 1582 (Supp. III 1985) to recover any monetary penalty claimed under 19 U.S.C. § 1592. 28 U.S.C. § 1582 is the jurisdictional provision permitting this Court to entertain an action under 19 U.S.C. § 1592 and the procedure outlined in subsection (e) becomes operative only after the Untied States commences that action. Since the United States has not commenced such an action, this Court does not have jurisdiction under 28 U.S.C. § 1582.

Nor does this Court have jurisdiction under 28 U.S.C. § 1581(i), which provides:

> (i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—
>
> (1) revenue from imports or tonnage;
> (2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;
> (3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or
> (4) administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

The Court finds the challenge raised by plaintiff regarding the propriety of Custom's seizure and summary forfeiture of the 24 motor vehicles does not fall within paragraphs (1)–(3) of subsection (i) nor is it part of the administration or enforcement of matters referred to in such paragraphs or in subsections (a)–(h) of 28 U.S.C. § 1581 (1982 & Supp. III 1985).

Plaintiff's reliance on *Wear Me Apparel Corp.* v. *United States*, 1 CIT 194, 511 F. Supp. 814 (1981) is misplaced since in that case the court found plaintiff's challenge therein involved quantitative restrictions (a quota) governed by paragraphs (3) and (4) of 28 U.S.C. § 1581(i). Plaintiff in this action does not present such a challenge nor does his challenge fall within the other paragraphs and subsec-

tions referred to in subsection (i) of 28 U.S.C. § 1581 which give jurisdiction to this Court.

Plaintiff's challenge to the propriety of the seizure and summary forfeiture of the 24 motor vehicles may present a cause of action within the jurisdiction of the district court. 28 U.S.C. § 1355 (1982) provides:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

Similarly, 28 U.S.C. § 1356 (1982) provides:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of any seizure under any law of the United States on land or upon waters not within admiralty and maritime jurisdiction, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

Plaintiff's action is not a matter "within the jurisdiction of the Court of International Trade under Section 1582" of Title 28 within the meaning of 28 U.S.C. § § 1355 or 1356.

Since this Court does not have jurisdiction under either 19 U.S.C. § 1592(e) or 28 U.S.C. § 1581(i) as claimed by plaintiff, or under 28 U.S.C. § 1582, the action is dismissed. So ORDERED.

(Slip Op. 87–121)

YALE MATERIALS HANDLING CORP AND SUMITOMO-YALE OF JAPAN, ET AL., PLAINTIFFS *v.* UNITED STATES, ET AL, DEFENDANTS, HYSTER CO., ET AL, DEFENDANTS INTERVENORS

Court No. 87–10–01008

[Motion for preliminary injunction granted in part and denied in part.]

MEMORANDUM OPINION AND ORDER

(Decided November 3, 1987)

Thompson, Hine and Flory (Mark Roy Sandstrom and *David Epstein* of counsel) for plaintiffs Yale Materials Handling Corporation and Sumitomo-Yale of Japan.

Arnold & Porter (Patrick F.J. Macrory and *Daniel C. Esty* of counsel) for plaintiffs Nissan Industrial Equipment Co. and Nissan Motor Co., Ltd.

O'Melveny & Myers (Kermit W. Almstedt and *Greyson Bryan* of counsel) for plaintiff Toyo Umpanki Co., Ltd.

Richard K. Willard, Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch *(Martha M. Ries,* Attorney, Commercial Litigation Branch

and *Jean Heilman Grier,* Attorney-Advisor, Office of the Chief Counsel for International Trade, U.S. Department of Commerce) for the government defendants.

Collier, Shannon, Rill & Scott (Paul C. Rosenthal, Mary T. Staley and *Robin H. Beeckman)* for defendants intervenors Hyster Co., International Lift Truck Builders Union, et. al.

WATSON, *Judge:* On October 14, 1987, the Court granted a temporary restraining order sought by Yale Materials Handling Corporation and Sumitomo-Yale of Japan, ("Yale") as part of an action for injunctive relief. The order temporarily enjoined the Department of Commerce from releasing any computer tapes which had been submitted by respondents in an antidumping investigation of industrial forklift trucks from Japan. The order was issued with the prospect that, in releasing confidential information under 19 U.S.C. § 1677f(c), Commerce was going to require the use of outside computer companies to process the tapes submitted by respondents before they would be turned over for the use of petitioners, and, as a result, respondents would face irreparable injury.

The original temporary restraining order was overbroad because, in addition to enjoining the release Yale's tapes, it enjoined the release of tapes submitted by respondents who had not sought relief in the court. The government moved to modify the original order. In the meantime, in a telephone conference held on October 20, 1987, a number of other respondents made known their intention to join or intervene in this action. In the interests of justice and judicial economy the original temporary restraining order was then extended to October 28, 1987, at which time the parties to this action assumed their respective positions in the action for injuctive relief.

On that date the temporary restraining order was modified to exclude those respondents who do not appear and various new parties entered the action. Yale was joined by Nissan Motors Co., Ltd. and Nissan Industrial Equipment Co. ("Nissan") and Toyo Umpanki Co., Ltd. On the government's side, intervention was granted to the Hyster Co., the Independent Lift Truck Builders Union, the International Association of Machinists and Aerospace Workers, the International Union-Allied Industrial Workers of America (AFL-CIO), the United Shop and Service Employees, and Ad-Hoc Group of Workers from Hyster's Berea, Kentucky and Sulligent, Alabama manufacturing facilities. A hearing was held at which oral argument was heard and testimony was received, establishing that, if Yale's computer tapes were to be improperly used, irreparable injury would result.

At the conclusion of the hearing, the temporary restraining order was extended to November 3, 1987 and on that date this opinion issues, granting the motion for a preliminary injunction in part and denying it in part.

The proposal to use outside computer companies to process the computer tapes which are to be disclosed to counsel for petitioners was not in accordance with the law. The dangers posed by unautho-

rized transmission and use of confidential information are magnified when the information is on computer tape. It is therefore essential that meaningful sanctions insure that persons entrusted with that information will secure it by all prudent and reasonable means. The sanctions proposed for computer companies do not meet this test because they do not contain the required degree of deterrence.

The sanctions proposed by Commerce for employees of these computer companies include the suspension of the violator from practice before the Commerce Department for up to seven years and "such other administrative sanctions" as may be imposed. This appears to be a pale and ineffectual variant of the sanctions for those violations occurring under the aegis of an attorney, which are disbarment of the attorney from practice before Commerce and the further prospect of professional disbarment. In the absence of sanctions of a similar unavoidable and catastrophic nature for outside computer companies the safeguards which the law requires for this information cannot be assured and the release of information to such entities cannot be justified when not consented to. The decision in *Timken Co.*, v. *United States*, 11 CIT ——, 659 F. Supp. 239 (1987) did not deal with a challenge to the release of computer tapes to outside computer companies and therefore offers no guidance for the resolution of this dispute.

On the other hand, the fact that the information is in the form of computer tape does not justify the further relief which movants seek, i.e., that all release be enjoined until, after a rule-making procedure, Commerce promulgate rules governing the handling of such material.

With respect to counsel for petitioners, the situation is quite different. The information has already been placed in the hands of counsel for the petitioners in printed form, i.e., "hard copy," to which the movants do not (and cannot) object. Here, the gravamen of the complaint is that the administrative protective order devised by Commerce is still insufficient to safeguard the information in the form of computer tapes, even in the hands of counsel, because there is a far greater risk of unauthorized transmission and use.

For this argument the rigors of the classic test for injunctive relief prove their usefulness. First, what has been shown, troubling as it is, is not the likelihood of injury, it is only a *possibility*, in the speculative sense of the word.

Second, the likelihood of success on the merits is not sufficiently clear. Commerce is acting under its lawful authority, in conformity with established procedures in a manner entirely distinguishable from its conduct in *Sacilor, Acieries et Laminoirs de Lorraine, et. al* v. *United States*, 3 CIT 191, 542 F. Supp. 1020 (1982). Although the Court is persuaded that computer tapes require a heightened level of protection, it has not been persuaded that the administrative protective order is inadequate to achieve that purpose.

With the first two factors being what they are, the remaining factors of balancing the harm should an injunction issue and analyzing public policy are not really germane.

We are left with the conclusion that, once Commerce has complied with the law, unless a party can show that the release of its information by Commerce to counsel for another party to the proceeding poses a clear and present danger, demonstrated by evidence regarding actual conditions, the technical possibility of injury is not enough.

In accordance with the views expressed herein, it is hereby ORDERED that defendants, their agents, servants, employees and all persons in active concert and participation with them are preliminarily enjoined from releasing or ordering the release of the computer tapes of plaintiffs submitted in the antidumping investigation bearing Docket No. A 588–703, to any independent computer facility, and it is further

ORDERED that, in all other respects, the motion for injunctive relief is denied.

(Slip Op. 87–122)

FORMER EMPLOYEES OF DELCO SYSTEMS OPERATIONS, CULPEPER, VIRGINIA, PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 86–12–01545

[Remanded to the Secretary of Labor.]

(Decided November 5, 1987)

Harry L. Dolan, pro se, for plaintiffs.

Richard K. Willard, Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch (*Elizabeth C. Seastrum*), Civil Division, United States Department of Justice, for defendant.

MEMORANDUM OPINION AND ORDER

RESTANI, *Judge:* Plaintiffs bring this action pursuant to 19 U.S.C. § 2395 (1982) and 28 U.S.C. § 1581(i) (1982) protesting the final determination of the Secretary of Labor (Secretary) denying certification of eligibility to apply for trade adjustment assistance. *See* 51 Fed. Reg. 35439, 35442 (Oct. 3, 1986) (summary of negative determination regarding eligibility); 51 Fed. Reg. 37797 (Oct. 24, 1986) (negative determination regarding application for reconsideration).

BACKGROUND

Under the Trade Agreements Act of 1974, a group of workers who are totally or partially "separated" from their employment as a result of "increases in imports of articles like or directly competitive

with the articles produced by such workers' firm or an appropriate subdivision thereof" may be certified by the Secretary as eligible to apply for adjustment assistance. 19 U.S.C. § 2272 (1982 & Supp. III 1985).

The Secretary made the following findings of facts, which, although they were not all supported by the record, do not appear to be challenged directly. The group of workers at issue were employed by Delco Systems Operations (Delco), a subsidiary of General Motors Corporation, at its Culpeper Virginia facility. Administrative Record (R) 36–38 (investigative report), R. 43–44 (negative determination regarding eligibility) and 51 Fed. Reg. at 37798 (negative determination regarding reconsideration). These workers produced gun turrets which were sold and shipped under contract to the General Motors Diesel Division (DDGM) in Canada. *Id.* The gun turrets were then mounted on light armored vehicles (LAV) and imported into the United States by the U.S. Government. *Id.* "The Culpeper facility closed in October 1985 and its work consolidated with that of DDGM's plant in London, Ontario." *Id.*

The Secretary found that this case involves lost export sales, and concluded that "[a]ny loss in export sales is not a basis for certification under the terms of the Trade Act of 1974," R. 44, which it subsequently refined to the proposition that "[l]ost export sales resulting from a shift of production to a foreign country is not a basis for certification under the terms of the Trade Act of 1974." 51 Fed. Reg. at 37798.

The Secretary also concluded, in his denial of reconsideration, that "the gun turrets produced at Culpeper are not like or directly competitive with the finished article—light armored vehicles produced in Canada." 51 Fed. Reg. at 37798. *See* 19 U.S.C. § 2272(3).[1] The Secretary supported this conclusion by stating that "imported finished articles are not like or directly competitive with domestic component parts thereof (*United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F.2d 174 (D.C. Cir. 1974)). In that case the court held that imported finished women's shoes were not like or directly competitive with shoe counters, a component of footwear." 51 Fed. Reg. at 37798.

DISCUSSION

I. THE SECRETARY'S DETERMINATION THAT GUN TURRETS ARE COMPONENTS OF LAVS AND THEREFORE NOT DIRECTLY COMPETITIVE WITH THOSE SAME DOMESTICALLY PRODUCED GUN TURRETS.

[1] Section 2272 provides, in part, that

> The Secretary shall certify a group of workers as eligible to apply for adjustment assistance under this part if he determines—
>
> . . . . . .
>
> (3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

19 U.S.C. § 2272(3).

Plaintiffs challenge the Secretary's determination that the gun turrets which were produced at Culpeper are merely components of light armored vehicles imported from Canada. Specifically, plaintiffs object to the Secretary's application of *United Shoe Workers of America, AFL-CIO* v. *Bedell,* 506 F.2d 174 (D.C. Cir. 1974) to this case and argue that "the relationship of shoe counters to shoes is NOT analogous to the relationship of gun turrets to light armored vehicles. All shoe counters are, of necessity, a part of shoes; all gun turrets are *not,* of necessity, a part of light armored vehicles." Plaintiffs' Brief at 3.

Under the statute, the Secretary must determine whether "increases of imports of articles like or directly competitive with articles produced by such workers' firm * * * contributed importantly to such total or partial separation * * *." 19 U.S.C. § 2272(3). In making this determination, courts have "established that an imported article is 'like or directly competitive' with a domestic product if it is 'interchangeable with or substitutable for' the article under investigation." *International Brotherhood of Electrical Workers, Local 1160* v. *Donovan,* 10 CIT ——, ——, 642 F. Supp. 1183, 1186 (1986). Where an article is a component of a finished end product, the courts have looked to imports of those components, but not of finished end products, in determining whether worker separations were caused by imports. *See, e.g., United Shoe,* 506 F.2d 174 (interpreting the statutory "like or directly competitive" standard, under the Trade Agreements Extension Acts of 1951 and 1955 and the Trade Expansion Act of 1962); *International Union, United Auto., Aerospace & Agric. Implement Workers of America, UAW, Local 834* v. *Donovan,* 8 CIT 13, 592 F. Supp. 673 (1984) (interpreting the same standard under the Trade Act of 1974) and cases cited therein. *But see,* 19 U.S.C. § 2481(5) (1982); 19 C.F.R. § 90.2 (1986); *United Shoe,* 506 F.2d at 186 nn. 79–80; *United Steelworkers* v. *Donovan,* 10 CIT ——, 632 F. Supp. 17, 22–23 (1986); *ILWU Local 142* v. *Donovan,* 10 CIT ——, Slip Op. 86–28, at 7–9 (Mar. 13, 1986) (articles at different stages of production may be "directly competitive if they have the same competitive effect on each other as articles at the same stage of production).

A review of trade adjustment assistance cases indicates that plaintiffs are correct in noting that under *United Shoe* (and its progeny) necessary or intrinsic parts of end products have been treated as non-competitive components of such end products. In *United Shoe* the court found that imports of completed women's shoes were not like domestically produced shoe "counters." 506 F.2d at 177–78 and n.13. As the court noted, "A counter is a necessary component of a normal shoe because the leather in the heel of the shoe could not hold its shape without the reinforcement the counter provides." 506 F.2d at 178 (footnote omitted). In other cases, imported color television sets were found not to be "like or directly competitive" with certain domestically produced parts of television sets,

such as printed circuit boards, fly backs, deflection yokes and picture tubes. *Morristown Magnavox Former Employees* v. *Marshall,* 671 F.2d 194 (6th Cir.) *cert. denied* 459 U.S. 1041 (1982); *International Brotherhood of Electrical Workers, Local 1160* v. *Donovan,* 10 CIT ——, 642 F. Supp. 1183. Similarly, domestically produced car batteries, wheel and body parts have been viewed as components of, and therefore not like or directly competitive with, imported cars. *UAW, Local 834* v. *Donovan,* 8 CIT 13, 592 F. Supp. 673; *Holloway* v. *Donovan,* 7 CIT 237, 585 F. Supp. 1427 (1984); *ACTWU, Local 1627* v. *Donovan,* 7 CIT 212, 587 F. Supp. 74 (1984). In various other trade adjustment cases articles that constitute a necessary part of, or a necessary factor in the production of, a product have been considered non-competitive components of that product. *See Gropper* v. *Donovan,* 6 CIT 103, 569 F. Supp. 883 (1983) (imported knit fabric garments did not compete with domestic finished fabric used for production of knit fabric garments); *Machine Printers & Engravers Ass'n* v. *Marshall,* 595 F.2d 860 (1979) (imported textile fabrics did not compete with domestically produced engraved rollers and screens used to print designs on fabric); *Dan Stipe* v. *U.S. Department of Labor,* 9 CIT 543 (1985) (imported raw steel not competitive with domestic steel products such as tunnel liner and sectional plate produced by plaintiff's firm).

In this case, the Secretary's determination that gun turrets are to be treated as "components" of LAVs rather than as additional imported products is only supported by evidence that the turrets are produced as part of DDGM's LAV program for sale to the U.S. Marines. R. 33. Petitioner has made references to evidence which may have a bearing upon the nature of gun turrets, their relationship to LAVs, and their country of origin. Plaintiffs' Response at 1–3. Some of them were incorporated in the administrative record, R. 2, 49, others apparently were not. Plaintiff's Response at 3 ("A copy of a representative label was submitted to the Department of Labor but has been omitted from the administrative record."). The Secretary did not focus its investigation on either the precise relationship between gun turrets and LAVs,[2] or upon the specific importations of gun turrets. It is apparent from the record that once the Secretary learned that Delco's gun turrets were sold to DDGM in Canada, its investigation essentially ceased.

If investigated in earnest, the Secretary might very well conclude that, apart from any other circumstances, the turrets should not be treated as "components." That is, even under the standard accepted

[2] General Motor's response to the Secretary's questionnaire touches upon the relevant issue but is inconclusive.

In response to a request to "Describe in detail all products and/or components manufactured at the petitioners' plant * * *" General Motors replied that the "Only product was assembly and test of turrets for Light Armored Vehicle program for sale to DDGM of Canada and subsequent sale to U.S. Marines." R. 33 (question I.B.).

General Motors was also asked "Does the firm import any products (including components) which are like or directly competitive with the products manufactured at the petitioners' plant? Describe these imports." R. 34 (question II.B.). It appears that (General Motors' initial response was that "DDGM imports turret to U.S. for LAV program." *Id. See* R. 53 & 58. The word "imports" is crossed out and replaced with the word "exports." R. 34. Accompanying this change is the following explanation from Doug Schmude, OTAA (Office of Trade Adjustment Assistance): "I called Ms. Bonnie Gardiner of General Motors today concerning question II.B and she said that the answer should be amended to read DDGM exports the light armored vehicle which includes the component (turret) to the U.S." *Id.* It is unclear whether the characterization of turrets as components is that of General Motors' Ms. Gardner or OTAA's Mr. Schmude.

by the Secretary, he or she must decide whether the gun turrets are imported as distinct articles from the LAV's. *See United Shoe,* 506 F.2d at 184 ("Congress did not intend protections to encompass domestic manufacturers of products of a type not imported as distinct articles").[3]

In any event, given the unique factual situation apparent from the record, it seems anomalous to decline certification on the basis that the gun turrets are "components." As explained in *Woodrum* v. *Donovan,* 5 CIT 191, 564 F. Supp. 826 (1983), *aff'd,* 737 F.2d 1575 (Fed. Cir. 1984) the distinction found in the statute among service employees had a rational basis because "it was reasonable for Congress to provide benefits to those workers whom it considered most immediately and directly affected by imports of like or directly competitive articles, namely, the employees of the firm producing the import-impacted articles." 5 CIT at 201, 564 F. Supp. at 834. *See Woodrum* v. *United States,* 737 F.2d 1575, 1576. A similar basis for drawing distinctions between employees in firms producing end products and those in firms producing components is apparent when one is discussing shoes in general as not directly competitive with shoe counters, or cars in general as not directly competitive with car batteries. *See United Shoe,* 506 F.2d at 180–81 and 183–84. Many factors may intervene in these situations which affect the impact of the imports on the domestically produced item. This basis for the component/end product distinction seems to bear no relation to the situation of a production facility that is moved abroad under the circumstances described in the record. The impact is as direct as it can be. In this case, the Secretary concluded in essence that there is no imported product which is "like or directly competitive" with the gun turrets produced by the plaintiff's firm. Yet, the gun turrets entered from Canada appear to be the same gun turrets sold to the same customer in the same relation to the LAV's as existed before the relocation of the plant. This leaves the court in considerable doubt as to the Secretary's reason for apparently deciding that Congress intended that eligibility in a case such as this could be denied based on the component/end product distinction. If the Secretary has a reasonable basis for concluding that Congress intended such a distinction to bar eligibility here, he or she should explain the reason for so interpreting the statute. In any case, the Secretary's factual determination cannot be sustained on the basis of the meager and apparently incomplete record before the court.

II. Lost Export Sales Resulting From A Shift of Production To A Foreign Country.

The Secretary also has asserted that this case involves lost export sales and concludes that lost export sales do not provide a basis for certification under the Trade Act of 1974.

[3] It appears to the court that overly fine tariff distinctions should not be applied to deny eligibility where common sense indicates Congress intended it.

The Secretary's determination that this case involves "lost export sales" reveals a similarly mechanistic approach to this case which disregards the specific factual circumstances underlying the production, exportation, importation, and sale of these turrets. The record reveals that prior to the close of the Culpeper facility the gun turrets at issue were produced domestically for ultimate sale in the U.S. Their production was undertaken pursuant to a contract for sale to the United States Government. They were exported to Canada in a transfer between related companies, and re-imported to the U.S. for the purposes of sale to the U.S. Marines.

Although it is true that lost export sales do not provide a basis, in and of themselves, for certification, the Secretary has provided no authority for concluding that the statute precludes certification in cases involving lost export sales where all of the statute's requirements are otherwise met. Furthermore, defendant's counsel has not attempted to provide specific support for such a reading of the statute.

It may be that the Secretary's conclusion is based upon nothing more than a general impression that imports do not compete with exports, and that increased imports ordinarily would not bring about lost export sales. In this case, however, the secretary has chosen to apply the term "lost export sales" to a set of facts which might satisfy the statutory requirements of competition and causation. Under these circumstances, the Secretary may not rely upon assumptions as to whether lost export sales in general are capable of meeting the statute's requirements, but must apply the specific facts of this case directly to the statute's requirements. *Cf. ILWU Local 142* v. *Donovan*, 10 CIT ——, Slip Op. 86–28, at 9–11 (March 13, 1986) (the fact that imported articles were later exported does not relieve the Secretary of the obligation to determine whether those imports "contributed importantly" to the workers' separation).

In the Secretary's negative determination regarding reconsideration, he refined his conclusion to "[l]ost export sales resulting from a shift of production to a foreign country is not a basis for certification * * *." 51 Fed. Reg. at 37798. The additional circumstance of a shift from domestic to foreign production, in itself does not appear to be determinative. To the contrary 19 U.S.C. § 2394 indicates that the statute may apply to such a situation. In a case involving separations from a firm's domestic plant and imports from that same firm's foreign plant, the court has noted that it "finds nothing in the legislative history or judicial interpretation of section 223(3) which would exclude from coverage workers separated because their own company 'imports articles like or directly competitive' with articles produced domestically." *Chapman* v. *Donovan*, 9 CIT 545, 548 n.2 (1985). *See International Union, United Auto., Aerospace & Agric. Implement Workers of America, UAW, Local 834* v. *Donovan*, 8 CIT 13, 18–19, 592 F. Supp. 673, 678 (1984) (imports

from a firm's foreign plant did not "contribute importantly" to separations from that firm's domestic plant, where such imports were *de minimis* compared to total domestic production and accounted for only 2.9% of lost sales at the firm's domestic plant).

Upon remand, the Secretary is to determine whether increased imports contributed importantly to plaintiffs' separations. Normally, the Secretary might only be concerned with increases in imports which occur prior to and up to the time of worker separations. There does not appear to be anything *per se* improper, however, with considering imports that occurred after the worker separations at issue, so long as the Secretary provides a valid explanation of how such imports were "likely to affect employment in the year of separation," *United Steelworkers of America* v. *Donovan*, 10 CIT ——, 632 F. Supp. 17, 21 (1986).

In this case, the limited production of gun turrets, coupled with General Motors' decision to consolidate Delco's production of gun turrets with DDGM's LAV facilities in Canada, suggest a strong connection between plaintiffs' separations and any subsequent increased imports of gun turrets (with or without the LAVs) from DDGM. Thus, even if imports of the relevant product did not occur or increase until after plaintiffs' separation, it still might be reasonable to conclude that, under the circumstances, increased imports contributed importantly to plaintiffs' separations.

In addition, the Secretary is to consider another aspect of the question of whether causally related "imports" increased. If the Culpeper gun turrets, as opposed to Canadian gun turrets, are considered to be "imports" simply because they were returned to the United States, "imports" likely did not increase. It is not clear from the statute or from the record that the Culpeper gun turrets must be so considered. A reasonable interpretation of the statute must be applied to the facts of this case. A recitation of conclusions unrelated to the statutory criteria and plaintiffs' particular claims is insufficient.

Because the Secretary denied eligibility based on vague reasoning and on unsupported findings that this case involved only "lost export sales" or production of non-competitive "component parts," the decision of the Secretary cannot be sustained as supported by substantial evidence, nor is the decision in accordance with law. The case is remanded and the Secretary shall determine in accordance with this opinion whether the eligibility requirements of the statute have been set.

Remand results shall be reported in forty-five days of this opinion.

SO ORDERED.

(Slip Op. 87–123)

CONVERTORS DIVISION OF AMERICAN HOSPITAL SUPPLY CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 81–5–00489

Before NEWMAN, *Senior Judge.*

MEMORANDUM OPINION AND ORDER

Disposable headwear made of a web material primarily composed of woodpulp and polyester fibers was properly classified by Customs under item 703.15. TSUS, as headwear, of man-made fibers, where the headwear was in chief value of polyester.

The polyester fibers in the web material constitute "man-made fibers," as defined in headnote 2(a), Schedule 3, Part 1, Subpart E, TSUS, whether or not the fibers are suitable for the manufacture of textiles; and the headwear is in chief value of man-made fibers (polyester) irrespective of whether the web material is a nonwoven textile fabric or paper.

Inasmuch as there is no genuine issue relative to any material fact, defendant is entitled to summary judgment as a matter of law dismissing this action.

[Defendant's motion for summary judgment granted; plaintiff's crossmotion for summary judgment denied; action dismissed.]

(Decided November 5, 1987)

Sharretts, Paley, Carter & Blauvelt, P.C. (*Donald W. Paley* and *Allan H. Kamnitz,* Esqs., of counsel) for plaintiff.

Richard K. Willard, Assistant Attorney General, *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Civil Division, Department of Justice, and *Susan Handler-Menahem,* Esq., for defendant.

NEWMAN, *Senior Judge:*

INTRODUCTION

Defendant has moved and plaintiff has cross-moved for summary judgment pursuant to USCIT Rule 56. These cross-motions raise the issue of the proper tariff classification for certain headwear, alleged by plaintiff to be disposable nurses' caps, imported into the United States through the port of El Paso, Texas between July 1972 and July 1979. The merchandise was classified by Customs under the provision in item 703.15, Tariff Schedules of the United States (TSUS), for Headwear, of man-made fibers, not knit, and assessed with duty at the rate of 25 cents per pound plus 20 per centum ad valorem. Plaintiff claims that the merchandise is properly dutiable under the provision in item 703.75, TSUS, for "Other headwear" at the rate of 8.5 per centum ad valorem.

For the reasons indicated below, defendant's motion for summary judgment is granted.

THE RECORD

In support of its motion for summary judgment, defendant has submitted:

Exhibit A: Copies of plaintiff's advertising materials for its disposable caps, which describe the caps' material as "fabric" and never as "paper."

Exhibit B: Copy of Kirk & Othmer, *Encyclopedia of Chemical Technology* (3rd Edition, 1981), Volume 16, pp. 104–109, which describes the characteristics of nonwoven textile fabrics and such fabrics made of woodpulp combined with various man-made fibers.

Exhibit C: Copy of *Pulp & Paper, Chemistry & Chemical Technology* (2nd Ed.), Vol. 1, Chapter IV, pp. 100–105, concerning pulping.

Affidavit (with attachments) by Richard J. Eyskens, National Import Specialist for the United States Customs Service, whose duties include the classification of headwear and other wearing apparel, stating *inter alia* that hospital disposable headwear is made from a nonwoven textile fabric and not from paper; and that nonwoven disposable headwear is usually made by a wet laid process and is web formed.

Affidavit by Alan Horowitz, National Import Specialist for the United States Customs Service, whose duties include the classification of machines for making paper under item 668.00, TSUS, and machines for making nonwoven fabrics under item 670.35, TSUS. Mr. Horowitz avers that the Rotoformer manufactured by the Sandy Hill Corporation is capable of producing a variety of materials, including nonwoven textile material and paper. Attached to the Horowitz affidavit are Sandy Hill promotional publications relating to the use of the Rotoformer for producing nonwoven fabrics by the wet laid system. In none of these publications is the Rotoformer described or referred to as a paper-making machine.

Affidavit by John E. Barnette, a Textile Technologist for the United States Customs Service, concerning the composition and range of fiber length for the fibers used in certain style numbers for plaintiff's disposable headwear tested in November and December of 1979.

In support of its cross-motion for summary judgment, plaintiff has submitted:

Exhibit 1: An affidavit by Ambrose L. Kellen, Vice-President of manufacturing of the Convertors Division of American Hospital Supply Corporation during the period of January 1975 to March 1980, concerning the materials comprising the nonwoven web produced to plaintiff's specifications by the Chicopee Manufacturing Company used to produce the imported headwear. Attached to the Kellen affidavit is a sample of the imported nurses' caps.

Exhibit 2: An affidavit by William J. Rose, manager of Chicopee's wet forming plant in North Little Rock, Arkansas between 1970 and 1979, describing the nonwoven web material used in the imported headwear. Attached to Rose's affidavit is a Sandy Hill catalog describing the Rotoformer, a sheet forming machine used to produce the web material, and a sample of the polyester fiber used in the subject headwear.

Exhibit 3: An affidavit by Trevor A. Finnie, Senior Vice-President of Werner Management Consultants, Inc., a consultant to the textile and apparel industries, concerning the unsuitability of 1.5 denier, ¼ inch cut, polyester in the production of textile fabrics. Attached to Finnie's affidavit is a sample of crimped polyester.

Exhibit 4: An affidavit by George J. Ganiaris, adjunct professor in the Textile Science Department of the Fashion Institute of Technology, concerning the non-use of uncrimped, ¼ inch, 1.5 denier polyester in textile applications.

Exhibit 5: A Customs Service ruling (C.S.D. 79–348) dated February 1, 1979 determining that certain disposable headwear made on a paper-making machine is classifiable under item 703.75, TSUS, without regard to which ingredient of the material was its chief value.

Exhibit 6: A Customs Service ruling (ORR Ruling 72–0134) dated March 16, 1972 concerning the classification of Verti-Forma papermaking machines.

Exhibit 7: A publication of the Albany Felt Company, "Paper Machine Felts," describing certain machines used in manufacturing paper, including the Sandy Hill Corp. Rotoformer.

FACTS

The merchandise involved in this classification dispute consists of disposable headwear produced from a nonwoven material, textile thread, and for some styles, rubber elastic. The nonwoven material was purchased by plaintiff from the Chicopee Manufacturing Company of North Little Rock, Arkansas, which produced the material to plaintiff's specifications. It appears that the material produced by Chicopee was cut by plaintiff's El Paso, Texas plant and then exported to Mexico for assembly with thread and elastic into the subject headwear.

At Chicopee, the nonwoven material was produced by creating a "web" utilizing a wet forming process. The web material was produced by combining woodpulp, short length, uncrimped and untwisted polyester fibers, resin binders, and fire retardants. The polyester was used in the web material to reinforce it and reduce the stiffness that would otherwise result from an all woodpulp web. There is no dispute that the polyester is the most costly material in the headwear.

At Chicopee, the woodpulp and polyester fibers were blended and the blended slurry was then processed by the Rotoformer, a sheet forming device, to create the nonwoven material of which the headwear is composed. Finally, the polyester used in the headwear is not twisted, crimped or curled and is not suitable for making yarns, for flocking or cordage, or for use in woven or knitted textile fabrics.

PARTIES' CONTENTIONS

Plaintiff asserts that the classification of the headwear by Customs under item 773.15 was improper since the polyester fibers used in the headwear are not "man-made fibers" within the tariff definition of that term in headnote 2(a), Schedule 3, Part 1, Subpart E. According to plaintiff, to fall within the tariff definition of the term "fibers" in headnote 3(f) of Subpart E, the polyester must be suitable for the manufacture of textiles. Thus, argues plaintiff, the polyester in the headwear is not suitable for the manufacture of textiles and consequently cannot constitute man-made fibers for tariff classification purposes.

Alternatively, plaintiff urges that even if the polyester fibers are man-made fibers, the polyester is not a "component material" of the headwear, but rather an ingredient of the web material, which assertedly is paper. Accordingly, plaintiff maintains that the headwear is in chief value of paper and therefore is properly dutiable under item 773.75, TSUS.

Defendant, on the other hand, insists that the polyester fibers are man-made fibers as defined in headnote 2(a), whether or not the polyester is suitable for the manufacture of textiles. Further, defendant urges that in any event, the polyester fibers are suitable for the manufacture of textiles, *i.e.*, nonwoven textile fabric, since the web material is a nonwoven textile fabric and not paper. Finally, defendant posits that whether the web material is nonwoven fabric or paper, the component material of chief value of the headwear remains man-made fibers (*viz.*, polyester), the headwear's most costly component material.

The court agrees with defendant's contentions.

OPINION

Fundamentally, under rule 56 of the Rules of the Court of International Trade a motion for summary judgment can be granted only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. The court has determined that there is no genuine issue as to any material fact, and that the legal issues presented in this case are ripe for determination on the cross-motions for summary judgment.

The primary task before the court is to determine the intent of Congress in defining *"Man-made fibers"* in headnote 2(a) of Schedule 3, Part 1, Subpart E, and in defining the term *"fibers"* in headnote 3(f) of Subpart E. Secondarily, if the court should conclude that the polyester fibers in the headwear are man-made fibers as defined in headnote 2(a), the court must then in conformance with General Headnotes 9(f)(i) and 10(f) address the legal issue of whether the headwear is in chief value of man-made fibers.[1]

[1] In the TSUS, the term "of" means that the article is wholly or in chief value of the named material. An article is in chief value of a material if such material exceeds in value each other single component material of the article. General Headnotes and Rules of Interpretation, Rules 9(f)(i) and 10(f).

I

There is no dispute between the parties that the polyester in the headwear is man-made. Nevertheless, plaintiff contends that the government's classification of the headwear under item 703.15, TSUS, is erroneous because the particular polyester fibers used in its headwear so not fall within the tariff definition of "man-made fibers." *See* headnote 2(a) of Schedule 3, Part 1, Subpart E. In that regard, plaintiff argues that the polyester does not meet the tariff definition of man-made fibers since, as defendant concedes, it is not capable of being used to create a textile yarn, braid, cordage or flock. To support its restrictive interpretation, plaintiff points to headnote 3(f), which reads:

> (f) the term *"fibers"* includes filaments and strips, as defined above, in noncontinuous form, *and any other fibrous structure suitable for the manufacture of textiles;* [Emphasis added in part.]

Plaintiff maintains that the polyester in the headwear is not suitable for the manufacture of textiles and hence cannot be regarded for tariff purposes as "fibers."

Defendant, on the other hand, argues that irrespective of whether the polyester is suitable for the manufacture of textiles, the polyester meets the definition of man-made fibers in headnote 2(a) of Schedule 3, Part 1, Subpart E, which reads:

> 2. (a) For the purposes of the tariff schedule, the term *"man-made fibers"* refers to the filaments, strips, and fibers covered in this subpart.

From the court's reading of headnote 3(f), the term "fibers" includes filaments and strips (which in turn are defined above in headnotes 3(a) to 3(e)) and *in addition* any other fibrous structures suitable for the manufacture of textiles. As the court construes headnote 3(f), it is only the "other fibrous structures" portion of the definition of fibers that is subject to the qualifying use language: "suitable for the manufacture of textiles." The Explanatory and Background Materials to the *Tariff Classification Study*, Schedule 3 (Nov. 15, 1960), page 48, clearly demonstrate that the language in headnote 3(f), "any other fibrous structure suitable for the manufacture of textiles" was intended to extend or broaden the scope of the term "fibers" rather than to restrict the definitions pertaining to "filaments" and "strips."[2]

Defendant aptly points out, too, that under headnote 3(f) the term fibers "includes filaments and strips, *as defined above*" (emphasis added), and that the definitions pertaining to filaments and strips set forth above in headnotes 3(a) to 3(e) are in no way expressly limited by their suitability for the manufacture of textiles except for

[2] The *Tariff Classification Study* Explanatory Notes, Schedule 3, page 48, state: "Headnote 3(f) defines the terms *'fibers'* as including filaments and strips in noncontinuous form and 'any other fibrous structure suitable for the manufacture of textiles'. The quoted language is intended to prevent the exclusion from the man-made fiber concept of some now unknown form of fibrous structure which would be properly associated with man-made fibers."

plexiform filaments as defined in headnote 3(c). Hence, it is apparent that when the drafters of the tariff schedules intended to impose a qualification of suitability for textile manufacture on the headnote definitions, they expressed that intent in the language of the headnote. The foregoing observation is further pointed up by the language of headnote 2(c), which provides that "[f]or the purposes of the provisions of the tariff schedules applicable to articles of man-made fibers *glass* filaments and *glass* fibers shall be treated as man-made fibers *only if they have been made into yarns or cordage, or if they are present in fabrics or other articles in the form of yarns or cordage"* (emphasis added). Thus, the language of headnote 2(c) demonstrates that when the drafters of the schedules intended to impose the use qualification urged by plaintiff, such intent was expressed.

The court, therefore, agrees with defendant's contention that irrespective of whether the polyester used in plaintiff's headwear is suitable for the manufacture of textiles, the polyester is embraced by the term "man-made fibers" in headnote 2(a) and in item 703.15, TSUS.

II

Even assuming *arguendo* that the polyester in the imported headwear may fall within the definition of "man-made fibers" in headnote 2(a) only if it is suitable for the manufacture of textiles, the court finds that the web material in which the polyester was used is a nonwoven textile fabric, as claimed by defendant, rather than paper, as claimed by plaintiff.

Plaintiff contends, and it is undisputed, that the polyester in its headwear is incapable of being spun into yarn, braided, used for flocking, or used to make woven or knitted textile fabrics because the short length fibers are not crimped, twisted or curled. However, on the basis of the undisputed facts, the court finds that the Chicopee web material is a "nonwoven fabric."

In the TSUS, the term "nonwoven fabrics" is defined as "fabrics made of matted textile fibers which are not in the form of yarns." Headnote 2(b), Schedule 3, Part 4, Subpart C. The *Tariff Classification Study,* Fifth Supplemental Report (May 16, 1963), Schedule 3, page 17, discloses the vital distinction for tariff classification purposes between nonwoven fabrics and paper:

> In addition to felts, the products involved in the aforementioned and related items include webs, waddings, battings and bonded fabrics. In bonded fabrics the fibers are bound together by processes other than felting. *These fabrics often closely resemble paper or paperboard but are distinguishable therefrom by the fact that the textile fibers are not digested in the process of manufacture.* Some papers and paperboards, however, do contain textile materials in the form of textile fibers, or of strands of such fibers, and even occasionally of small segments of yarns,

> which are included to impart a desired characteristic but without destroying the essential character of the product as a paper or paperboard. For example, silk filaments are used in paper currency to discourage counterfeiting, and textile materials are added for decorative effect in handmade art paper, etc. Such papers will, of course, be classified in Schedule 2. [Emphasis added.]

Plaintiff's contention that the polyester was "digested" in the process of producing the web material, even though no physical disintegration took place in the polyester fibers, is without merit. Indeed, the Sandy Hill descriptive brochure for the Rotoformer and other evidence before the court show indisputably that the Rotoformer used to manufacture the web material has no process of digestion. *See* affidavit and attached exhibits of Import Specialist Horowitz. Moreover, plaintiff's bland assertion that "the material at issue has been reduced to a homogeneous pulp with other fibers in the slurry" (brief at 18) is not substantiated by the Rose affidavit (plaintiff's exhibit 2); nor did Rose describe the pulp and polyester in the web as a "homogeneous mass."

Significantly, plaintiff's brochures used in marketing its headwear (defendant's exhibit A) consistently describe the material in the headwear as a "fabric" and never as "paper;" and significantly too, the Sandy Hill descriptive brochure for the Rotoformer represents that the machine is a "sheet forming device" and not a paper-making machine. A reading of the Sandy Hill brochure makes it abundantly clear that the Rotoformer is far more than simply a machine for making paper, and that the Rotoformer is strongly promoted for its use in making nonwoven fabrics. In point of fact, the Sandy Hill catalog, page 6, stresses the versatility of the Rotoformer's applications and specifically refers to nonwoven fabrics for hospital disposables:

> One of the most intriguing applications for ROTOFORMERS has been in the development of nonwoven fabrics. Sandy Hill has pioneered in the development of machinery, such as the ROTOFORMER, for the production of nonwovens and many of the products now on the market were developed on Sandy Hill ROTOFORMERS. The machine is particularly suitable for such products because of its ability to produce sheets using fibers which cannot be formed on any other forming device.
>
> To illustrate the potential in the field of nonwovens, surveys indicate that the market for *disposables in hospitals alone is $180,000,000, annually. The total market is estimated in the billions of dollars.* [Emphasis added.]

In furtherance of its argument that the Chicopee material is nonwoven textile fabric, defendant has submitted portions of several textile publications. Hence, in the publication, *Textiles: Fiber to Fabric* (5th Ed., 1975) (*see* exhibit 3 attached to the Eyeskens affidavit), with reference to formed (nonwoven) fabrics, the authors state:

"nonwovens are defined by the American Society for Testing Materials as fabrics constructed of fibers held together by bonding or the interlocking of fibers or both, accomplished by mechanical, chemical, thermal, or solvent means, and the combination thereof" (page 162);

the fibers used in nonwoven fabrics include polyester (page 162);

the wet-lay method based upon paper-making is used to produce nonwoven fabrics (page 163);

formed fabrics may have a wide range of characteristics including a paper-like appearance (page 167);

and formed fabrics are used for apparel such as caps (page 167).

In the publication, *Understanding Fabrics: From Fiber to Finished Cloth* (Fairchild Publications, 1982) (*see* exhibit 2 attached to the Eyeskens affidavit), the author describes "Nonwoven/Fused/Formed Fabric Structure" as "A fabric structure produced directly from fibers by a process of interlocking or bonding the fibers by any one of the following seven processes: * * * 6. Wet Process." This publication also states: "Fibers used to produce nonwoven fabrics, alone or in combination, include * * * polyester" (page 85).

To buttress its argument that since the polyester fibers are incapable of being spun into yarn the web material is not a "nonwoven fabric," plaintiff cites *B.A. McKenzie & Co., Inc.* v. *United States,* 63 Cust. Ct. 110, C.D. 3883 (1969). However, plaintiff's reliance on *McKenzie* is misplaced, since that case involves *vegetable* fiber which is expressly defined in the textile schedule (Schedule 3, Part 1B, headnote 1) as vegetable fiber which can be spun. As previously indicated herein, no such use qualification is applicable to the man-made polyester fiber in plaintiff's headwear.

In sum, on the undisputed facts before the court, the Chicopee web material is not paper as a matter of law, as claimed by plaintiff, but rather is a nonwoven textile fabric, as urged by defendant. Accordingly, the polyester fibers in plaintiff's headwear are suitable for the manufacture of textiles and are man-made fibers within the purview of item 703.15.

III

The court turns to defendant's contention that whether or not the web material is paper, the headwear is in chief value of polyester (which is without dispute the most costly material in the subject headwear), and therefore the imports were properly classified by Customs under item 703.15, TSUS.

Plaintiff's position is that if the web material is paper, the headwear is in chief value of paper and thus properly classifiable under item 703.75 as "Other headwear." Further, according to plaintiff, the polyester is merely an ingredient of the paper rather than a component material of the headwear. To support its contention, plaintiff relies upon certain observations in *Swiss Manufacturers Association, Inc.* v. *United States,* 39 Cust. Ct. 227, C.D. 1933

(1957), wherein the court stated that "in making an article or manufacture dutiable according to its component material of chief value, Congress may name a material which is itself a manufacture * * *." 39 Cust. Ct. at 235.

But as stressed by the *Swiss Manufacturers* court, and conceded by plaintiff, the above-quoted approach to determining the component material of chief value represents a limited exception to the general method of determining the component material of chief value by comparing the costs of the primary materials or substances comprising the finished article, rather than the costs of manufactured components. Defendant insists that the special rule mentioned in *Swiss Manufacturers* is inapplicable here since, in classifying headwear in Schedule 7, Part 1, Subpart B according to its component material of chief value, Congress did not specifically name paper as a material.[3]

The court agrees with defendant and holds that the usual rule "that the component materials of an article or manufacture are the primary things or substances of which it is made" (*Swiss Manufacturers*, 39 Cust. Ct. at 235) is controlling here.

In *Kaplan Products and Textiles, Inc.* v. *United States*, 51 CCPA 2, C.A.D. 828 (1963), satin brocade cloth, classified as in chief value of rayon, was produced by bonding cellophane to aluminum foil, which was then cut into narrow strips and then woven with rayon yarn. The aluminum-cellophane strip material was more costly than the rayon yarn. The court held that in order to establish the cloth was not in chief value of rayon, plaintiff had the burden of proving the relative values of the *individual* component materials, *i.e.*, rayon, aluminum and cellophane.

See also Wheeler & Miller v. *United States*, 54 Cust. Ct. 137, C.D. 2521 (1965) ("[e]xcept where the statute contemplates that a mixture may be a component material of chief value * * * and except for chemical combinations and mixtures * * * the materials must be single materials: Two or more different materials cannot be reassembled together to make a combined material for value comparison purposes" (citations omitted).)

Following the above-cited decisions, the court concludes that whether or not the web material is paper, the fact that the headwear is in chief value of man-made fibers required classification of the imports by Customs under item 775.15, TSUS.

CONCLUSION

Plainly, this case falls squarely within the spirit of the salutary procedural remedy of summary judgment, designed to obviate unnecessary trials where there is no genuine issue as to any material

[3] In Schedule 7, Part 1, Subpart B, headwear is classifiable in accordance with its component material of chief value pursuant to General Headnotes 9(f)(i) and 10(f). Inasmuch as paper is not one of the named materials in Subpart B, it appears that, by implication, headwear in chief value of paper is properly classifiable under the residual provision in item 703.75 for "Other headwear." However, in the instant case where the headwear is in chief value of man-made fibers (whether or not the web material is paper), the headwear is obviously more specifically classifiable under item 703.15 than under the residual item 703.75. While there is no specific provision for headwear of paper in Subpart B, the court has noted that presently item 702.15 covers caps of paper *yarn*, which provision is plainly inapplicable to the subject nonwoven headwear.

fact and the moving party is entitled to judgment as a matter of law. Here, on the undisputed facts and legal issues presented, defendant is entitled to summary judgment as a matter of law. Accordingly, it is hereby

ORDERED that defendant's motion for summary judgment is granted; and it is further

ORDERED that plaintiff's cross-motion for summary judgment is denied; and it is further

ORDERED that this action be, and hereby is, dismissed.

(Slip Op. 87–124)

FORMER EMPLOYEES OF ZAPATA OFFSHORE CO., INC., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 86–11–01414

Before DICARLO, *Judge.*

Secretary of Labor (Secretary) determined that employees of an oil well drilling firm had not "produced" an article under section 222(3) of the Trade Act of 1974, as amended, 19 U.S.C. § 2272(3) (Supp. III 1985), to make them eligible for trade adjustment assistance. The Secretary's determination to deny certification for worker adjustment assistance benefits is affirmed.

[Action dismissed.]

(Decided November 9, 1987)

Ross & Hardies (John B. Pellegrini and *Bret E. Suval)* for plaintiffs.

Richard K. Willard, Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, Department of Justice *(Elizabeth C. Seastrum);* (*Gary Bernstecker* and *Patrick Gilfillan),* Department of Labor, for defendant.

DICARLO, *Judge:* Plaintiffs, former employees of Zapata Offshore Company, Inc. (Zapata Offshore), challenge the determination of the Secretary of Labor (Secretary) that workers at that company are ineligible for trade adjustment assistance under section 223 of the Trade Act of 1974 (Act), 19 U.S.C. § 2273 (1982).

After reviewing the administrative record and the arguments of the parties, the Court holds that the Secretary's denial of certification is supported by substantial evidence and is in accordance with law. The Secretary's determination is affirmed.

Plaintiffs were employed in drilling offshore oil wells for various oil companies and government contractors. Plaintiffs petitioned for adjustment assistance claiming that increased imports of foreign oil depressed the price of oil and thus reduced the demand for domestic offshore oil well drilling.

The Secretary denied plaintiffs' petition, finding that plaintiffs' company "does not produce an article as required for certification under section 222 of the Trade Act of 1974." *Summaries of Determi-*

nations Regarding Eligibility To Apply for Worker Adjustment Assistance, 51 Fed. Reg. 40,087, 40,088 (Nov. 4, 1986). In denying plaintiffs' petition and other similar companies' petitions, the Secretary stated:

> The workers at these firms perform services for the oil and gas industry.
>
> The investigation revealed that the workers of the subject firms do not produce an article within the meaning of Section 223(3) of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by Section 222 of the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals. Therefore workers of the subject firms may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firms by ownership, or a firm related by control. In any case the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and the reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of the subject firms in this case.
>
> The services provided by the subject firms are furnished to unaffiliated companies that are not related to the subject firms by ownership or control.

R. Doc. 7.

The record reveals that plaintiffs' employer, Zapata Offshore, was affiliated with or related through common ownership to an oil company, Zapata Exploration, but that only 10% or less of plaintiffs' work was for this oil company. The Secretary requires that at least 25% of the service workers' activity be expended in service of the related company which produces the import-impacted article before the separation of the service workers can be considered importantly caused by a reduced demand for their services from the related firm. *See Abbott* v. *Donovan,* 6 CIT 92 , 101, 570 F. Supp. 41, 49 (1983), *opinion after remand,* 7 CIT 323, 324–25, 588 F. Supp. 1438, 1439–40, *opinion after further remand,* 8 CIT 237, 241, 596 F. Supp. 472, 475 (1984). Plaintiffs do not challenge this portion of the Secretary's determination, and the Court will not further discuss it.

In reviewing a decision of the Secretary denying a petition for certification of eligibility for trade adjustment assistance benefits, the Court, pursuant to section 284 of the Trade Act of 1974, 19 U.S.C. § 2395(c) (1982), must determine whether the Secretary's decision is supported by substantial evidence contained in the administrative record and in accordance with law. *Woodrum* v. *Donovan,* 5 CIT 191, 193, 564 F. Supp. 826, 828 (1983), *aff'd* 2 Fed. Cir. (T) 82, 737 F.2d 1575 (1984); *Former Employees of Asarco's Amarillo Copper Refinery* v. *United States,* 11 CIT ——, Slip Op. 87–119, at 4 (Nov. 2, 1987). Section 284(b) of the Act, 19 U.S.C. § 2395(b) (1982), provides

that "[t]he findings of fact by the Secretary * * * if supported by substantial evidence, shall be conclusive" on the Court. There is also the "further requirement that the rulings made on the basis of those findings be in accordance with the statute and not be arbitrary or capricious, and for this purpose the law requires a showing of reasoned analysis." *Chapman* v. *Donovan,* 9 CIT 545, 547 (1985) (quoting *International Union, United Auto., Aerospace and Agricultural Implement Workers of Am.* v. *Marshall,* 584 F.2d 390, 396 n.26 (D.C. Cir. 1978)); *see* 19 U.S.C. § 2273(c) (1982).

The question presented to the Court is whether the Secretary's determination that plaintiffs were not engaged in producing oil, but only performed a service for those who did, is supported by substantial evidence and is according to law.

Plaintiffs argue as a threshold matter that the Secretary did not adequately investigate the nature of the work they performed before determining that they did not produce oil. Plaintiffs assert that the Secretary is legally required to make a detailed factual inquiry in this case because no judicial precedent establishes whether workers engaged in the drilling of oil wells are service workers rather than production workers, citing *Woodrum* v. *Donovan,* 4 CIT 46, 54, 544 F. Supp. 202, 208 ("In the absence of a judicial precedent conclusively establishing that the employees of new car dealerships are service workers, a factual inquiry should also have been conducted into the nature of the work performed by the petitioners"), *reh'g denied,* 4 CIT 130 (1982), *opinion after remand,* 5 CIT 191, 564 F. Supp. 826 (1983), *aff'd* 2 Fed. Cir. (T) 82, 737 F.2d 1575 (1984).

In *Woodrum,* the court remanded the Secretary's denial of adjustment assistance as to former employees of a new car dealership, because the Secretary neither conducted an investigation nor posted the proper notices so as to afford the plaintiffs an opportunity to request a hearing. The court found these procedural errors had the effect of excluding from the record relevant facts concerning the contention that the workers were employed by a firm which "produced" import-impacted articles. Since the record did not reveal what activities these employees performed, the court concluded that the administrative level was the proper place for the employees to prove that the process of producing new automobiles did not end until their tasks were done.

This action is different. Here the Secretary conducted an investigation and published the required notices. Although *Woodrum* requires the Secretary to investigate each properly filed petition, it also holds that the nature and extent of that investigation are matters "which properly rest within the sound discretion of the Secretary." *Woodrum,* 4 CIT at 51, 544 F. Supp. at 205; *see also Abbott,* 6 CIT at 97, 570 F. Supp. at 47.

Also unlike *Woodrum,* here the nature of plaintiffs' work, the drilling of offshore oil wells, is self-explanatory. Oil wells must be drilled before oil can be extracted from the ocean floor. The plain-

tiffs claim that the Secretary did not consider other aspects of their work necessary to complete the well after drilling, such as setting and cementing the production casing for support, inserting steel pipe or "tubing" through which oil will flow, and installing valves to control that flow of oil. But, these additional facts are irrelevant to the legal issue of whether employees of a company that drills a well, but does not own it or manage the extraction of oil from it, "produced" oil within the meaning of that term as used in section 222(3) of the Act, as amended, 19 U.S.C. § 2272(3) (Supp. III 1985). This situation is analogous to that in *Pemberton* v. *Marshall*, 639 F.2d 798, 801–02 (D.C. Cir. 1981), where the court held the Secretary did fulfill his statutory obligation to investigate since the important facts as to the nature of the work done at the facility and its relation to the production of the article were disclosed and the other information not disclosed was irrelevant to the determination to be made.

Plaintiffs' work raises a question as to which steps in the chain of production fall within the meaning of the term "produced" as used in section 222(3) of the worker adjustment provisions of the Act. While several cases have found that activities employees perform after an article is manufactured do not constitute production of that article, *see, e.g., Pemberton*, 639 F.2d at 799 (repair and maintenance of ships); *Hedgpeth* v. *Donovan*, 6 CIT 288 (1983) (warranty work on automobiles); *Woodrum*, 5 CIT at 191, 564 F. Supp. at 826 (inspection and servicing of automobiles), this action involves activities employees perform before the article is manufactured or, in this case, obtained.

Cases which might have assessed the performance of activities prior to manufacture never reached such issue because the employees "produced" only a part of the finished article and the part created was found not to be "like or directly competitive" with the finished import-impacted article as required by section 222(3) of the Act. *See, e.g., Morristown Magnavox Former Employees* v. *Marshall*, 671 F.2d 194 (6th Cir. 1982) *cert. denied*, 459 U.S. 1041 (1982) (component parts of television sets); *ACTWU Local 1627, AFL–CIO* v. *Donovan*, 7 CIT 212, 587 F. Supp. 74 (1984) (automotive batteries for cars); *Gropper* v. *Donovan*, 6 CIT 103, 569 F. Supp. 883 (1983) (fabric for knit fabric garments). These cases are of little guidance.

Resolution of the issue plaintiffs present depends upon the interpretation of the term "produced" in section 222(3) of the Act. The starting point for interpreting a statute is the language of the statute itself. *Consumer Product Safety Comm'n* v. *GTE Sylvania*, 447 U.S. 102, 108 (1980); *Southeastern Community College* v. *Davis*, 442 U.S. 397, 405 (1979). The statute is silent as to when or by whom a natural resource is produced and does not define the term "produced" used in section 222(3) of the Act.

The statutory scheme offers little guidance. One purpose of the Act is "to provide adequate procedures to safeguard American in-

dustry and labor against unfair or injurious import competition, and to assist industries, firm[s], workers, and communities to adjust to changes in international trade flows." 19 U.S.C. § 2102(4) (1982). But the Act contains many eligibility requirements or limitations to adjustment assistance, including Section 222(3) which requires that the employees' firm or an appropriate subdivision "produced" an import-impacted article.

The legislative history of the trade adjustment assistance provisions of the Act is also silent as to what Congress intended with respect to workers in the oil industry and contains no discussion as to how to interpret the term "produced."

The Court must accord substantial weight to the interpretation put on the statute by the agency charged with its administration. *Kelley* v. *Secretary, United States Dep't of Labor,* 812 F.2d 1378, 1380 (Fed. Cir. 1987) (citing *Zenith Radio Corp.* v. *United States,* 437 U.S. 443, 450 (1978); *American Lamb Co.* v. *United States,* 785 F.2d 994, 1001 (Fed. Cir. 1986)). A court can "reject an agency interpretation that contravenes clearly discernible legislative intent," but "its role when that intent is not contravened is to determine whether the agency's interpretation is 'sufficiently reasonable.' " *Kelley,* 812 F.2d at 1380 (quoting *American Lamb,* 785 F.2d at 1001). "[A] court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Kelley,* 812 F.2d at 1380 (quoting *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.* 467 U.S. 837, 844 (1984); *United States* v. *Federal Ins. Co.,* 805 F.2d 1012, 1017 (Fed. Cir. 1986) *cert. denied,* 107 S. Ct. 2179 (1987)).

The Secretary's interpretation of section 222(3) of the Act is that the term "produced" does not embrace the performance of services. Implicit in the Secretary's position in this action is a conclusion that, as for oil, production does not include preparation prior to extraction of the oil, such as drilling the well, regardless of the necessity of such preparation. Since the Secretary does not view drilling of the well as production of oil, it is reasoned that drilling is a service to the oil and gas industry which produces the oil (presumably those companies which own the wells and manage the extraction of the oil).

Plaintiffs argue that the Secretary's interpretation of the term "produced" used in section 222(3) of the Act is too narrow and thus contravenes the intent of Congress. To support this position, plaintiffs cite cases involving the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, asserting that under that law employees of concerns engaged in the drilling of oil wells were found to have been engaged in the production of goods. *Warren-Bradshaw Drilling Co.* v. *Hall,* 317 U.S. 88 (1942); *Sealy* v. *Mitchell,* 249 F.2d 327 (5th Cir. 1957). Plaintiffs urge a broader interpretation of "produced" is necessary to promote the remedial purpose of the trade adjustment assistance provisions of the Act.

Resort to cases interpreting the Fair Labor Standards Act is not helpful. The trade adjustment assistance provisions of the Trade Act of 1974 are "vastly different in purposes and goals" from the Fair Labor Standards Act. *Woodrum*, 5 CIT at 198, 564 F. Supp. at 832.

The Secretary's interpretation, furthermore, does not violate the remedial purpose of the Act. "While it is true that the assistance provisions are to be construed liberally * * * the parameters cannot be ignored. The benefits of the Act are not universal and some hardships may result." *Pemberton*, 639 F.2d at 800 (citation omitted).

The Court does not discern any legislative intent which would permit it to reject the Secretary's interpretation. The Court must still assess, however, if that interpretation is reasonable.

If Congress considered when or by whom a natural resource such as oil is produced, it must have recognized that such decision is inherently discretionary. It could be argued that such resources are not produced by man at all, but are created through geologic processes extending over thousands of years. In assessing human involvement in oil production, the Secretary found drilling of an oil well to be a service to the oil and gas industry, resulting in employees engaged in drilling to be viewed as not having "produced" oil within the meaning of that term as used in section 222(3) of the Act.

The Secretary could have considered workers engaged in drilling to be at such a level in the general process of oil extraction that their activities would be viewed as having "produced" oil within the meaning of section 222(3) of the Act. That this section is susceptible to more than one interpretation, however, does not make the interpretation adopted by the Secretary unreasonable. In evaluating the Secretary's interpretation, the Court "need not find that its [the Secretary's] construction is the only reasonable one, or even that it is the result we [the court] would have reached had the question arisen in the first instance in judicial proceedings." *Paden* v. *United States Dept. of Labor*, 562 F.2d 470, 473 (7th Cir. 1977) (quoting *Unemployment Compensation Comm'n of Alaska* v. *Aragon*, 329 U.S. 143, 153 (1946)). The Secretary's interpretation of the term "produced" in section 222(3) of the Act as it relates to these workers in the oil industry is sufficiently reasonable to preclude the Court from substituting its judgment for that of the Secretary.

Congress sought to provide trade adjustment assistance only to those workers that "produced" an import-impacted article. The Secretary has found that plaintiffs have not "produced" an import-impacted article within the meaning of Section 222(3) of the Act. The Secretary's determination that plaintiffs are therefore ineligible for adjustment assistance is supported by substantial evidence and is according to law.

The Secretary's denial of certification for trade adjustment benefits under the Act is affirmed. The action is dismissed. Judgment will be entered accordingly.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	
				Item No. and rate	
C87/198	Watson, J. October 14, 1987	Zayre Corp.	86–4–00448	Item 653.52 4.2%	It
C87/199	Restani, J. October 14, 1987	Algoma Tube Corp.	81–3–00275	Item 610.42 or 610.43 Various rates	It
C87/200	Restani, J. October 14, 1987	Algoma Tube Corp.	83–12–01764	Item 610.42 or 610.43 Various rates	It
C87/201	Restani, J. October 14, 1987	Algoma Tube Corp.	85–5–00694	Item 610.42 or 610.43 or 610.52 Various rates	It
C87/202	Restani, J. October 14, 1987	Algoma Tube Corp.	85–9–01167–S	Item 610.42 or 610.43 Various rates	It
C87/203	Re, C.J. October 15, 1987	Mattel, Inc.	82–5–00665	Item 737.95 17.5% or 16.2%	It
C87/204	Re, C.J. October 15, 1987	Mattel, Inc.	82–11–01484	Item 737.95 17.5% or 16.2%	It
C87/205	Re, C.J. October 15, 1987	Mattel, Inc.	83–2–00228	Item 737.95 17.5% or 16.2%	It
C87/206	Re, C.J. October 15, 1987	Mattel, Inc.	83–12–01820	Item 737.95 16.2% or 14.9%	It

ATION DECISIONS

HELD Item No. and rate	BASIS	PORT OF ENTRY AND MERCHANDISE
Item 653.52 Free of duty	Agreed statement of facts	Boston Hibachis
Item 610.39 or 610.40 Various rates	Algoma Tube Corp. v. U.S. S.O. 85–89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casings
Item 620.39 or 610.40 Various rates	Algoma Tube Corp. v. U.S., S.O. 85–89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casings
Item 610.39 or 610.40 Various rates	Algoma Tube Corp. v. U.S., S.O. 85–89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casings
Item 620.39 or 610.40 Various rates	Algoma Tube Corp. v. U.S., S.O. 85–89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casings
Item A737.40 Free of duty	Agreed statement of facts	Los Angeles Hug'n talk lamb skins
Item A737.40 Free of duty	Agreed statement of facts	Los Angeles Hug'n talk napper puppy skins
Item A737.40 Free of duty	Agreed statement of facts	Los Angeles Hug'n talk napper puppy skins
Item A737.40 Free of duty	Agreed statement of facts	Los Angeles Hug'n talk naper puppy skins

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATIO
C87/325	Watson, J. October 15, 1987	Ingersoll-Rand Co.	85–10–01472	Transaction value

VALUATION DECISIONS

OF ION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
ue	Equals the invoiced unit values of the merchandise plus in the case of entry no. 633715, the value of the assist	Agreed statement of facts	New York Not stated

Appeals to the U.S. Court of Appeals for the Federal Circuit

United Electrical, Radio & Machine Workers of America *v.* United States, 11 CIT ——, Slip Op. 87–95, *appeal docketed,* No. 88–1035 (Fed. Cir. Oct. 26, 1987).

Superior Wire *v.* United States, 11 CIT ——, Slip Op. 87–98, *appeal docketed,* No. 88–1020 (Fed. Cir. Oct. 16, 1987).

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American Permac, Inc. *v.* United States, 10 CIT ——, Slip Op. 86–120, *aff'd,* No. 87–1159 (Fed. Cir. Oct. 5, 1987).

UST, Inc. *v.* United States, 10 CIT ——, Slip Op. 86–100, *aff'd,* No. 87–1134 (Fed. Cir. Oct. 21, 1987).

Ameritrade Corp. *v.* Carnes, 10 CIT ——, Slip Op. 86–53, *aff'd,* No. 87–1014 (Fed. Cir. Oct. 1, 1987).

E.C. McAfee *v.* United States, 10 CIT ——, Slip Op. 86–135, *aff'd,* No. 87–1209 (Fed. Cir. Oct. 23, 1987).

Dri Industries, Inc. *v.* United States, 11 CIT ——, Slip Op. 87–15, *aff'd,* No. 87–1301 (Fed. Cir. Oct. 28, 1987).

A.N. Deringer *v.* United States, 10 CIT ——, Slip Op. 86–134, *aff'd,* No. 87–1213 (Fed. Cir. Oct. 30, 1987).

American Air Parcel Forwarding Co. *v.* United States, 11 CIT ——, Slip Op. 87–32, *dismissed,* No. 87–1477 (Fed. Cir. Nov. 3, 1987).

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